

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TIMOTHY WEST,)	CASE NO. 1:15-cv-203
)	
PETITIONER,)	JUDGE SARA LIOI
)	
vs.)	ORDER
)	
WARDEN BRADSHAW,)	
)	
RESPONDENT.)	

Before the Court is petitioner’s motion for issuance of an “emergency plenary injunction to stop the transfer of a prisoner while his petition for federal habeas corpus is pending before a federal court pursuant to FRAP 23(a).” (Doc. No. [80](#).) Respondent has opposed the motion. (Doc. No. 81.)

As properly pointed out by respondent, Fed. R. App. P. 23(a), which provides that petitioner’s custody cannot be transferred “[p]ending *review of a decision* in a habeas corpus proceeding[.]” is inapplicable. The Court currently has under advisement the magistrate judge’s report and recommendation that the petition should be denied. No *decision* has been rendered. *See Jones v. Warden*, No. 1:14-CV-01218, 2015 WL 7829145, at *3 (S.D. Ohio Dec. 4, 2015) (citing *Caler v. Howes*, No. 1:06-cv-172, 2008 WL 191638, at *1 (W.D. Mich. Jan. 22, 2008) (Rule 23 does not apply because no decision has been made and no appeal is pending)).

Further, any transfer will not divest this Court of subject matter jurisdiction over this habeas petition, although it may require a substitution of respondent. In addition, the fact that petitioner may, following transfer, be housed in a different venue will also have no effect. *See* 28

U.S.C. § 2241(d) (concurrent jurisdiction in district court where prisoner is in custody and district court for the district wherein petitioner was convicted and sentenced).

Finally, petitioner has no constitutional right to be housed in a particular prison or under a particular security classification, and prison authorities have broad discretion in making housing determinations, without interference by courts. *Olim v. Wakinekona*, 461 U.S. 238, 245, 103 S. Ct. 1741, 75 L. Ed. 2d 813 (1983); *Meachum v. Fano*, 427 U.S. 215, 224, 96 S. Ct. 2532, 49 L. Ed. 2d 451 (1976).

Petitioner's motion for an injunction to halt his transfer to a different prison pending resolution of this habeas action (Doc. No. [80](#)) is **denied**.

IT IS SO ORDERED.

Dated: January 25, 2017



HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE